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ABSTRACT

Using statis theory in the composition classroom is not new. The three main questions of stasis--the "an sit," or conjectural issue, the "quid sit," or issue of definition, and the "quale sit," or issue of quality--roughly approximate different kinds of writing. The method originated with Hermagoras and was developed by Cicero as a method of inquiry for use in the courtroom. Thus a case regarding the "an sit" or conjectural issue might concern whether one individual killed another, whereas the issue of definition would address the name and type of a particular action, manslaughter versus premeditated murder. In cases where agreement has been reached regarding both the committal and the type of act, the question that remains is the quality of the act. This might include, for example, to what degree intent was present in the act. Stasis theory can be used as a method of critical thinking. Stasis theory may be used as a tool of invention, comparison, and, ultimately, analysis when applied in conjunction with Ciceronian judicial rhetoric. It can predict the outcomes of current cases in court, including those concerning Mayor Marion Barry of Washington, D.C., Mike Tyson, and William Kennedy Smith. A comparison of Tyson's and Smith's cases shows one way to use the method. Stasis theory assists students in their critical thinking since it requires them to zero in on the point in question. (TB)

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Back in the Courtroom Again:

Ciceronian Stasis Theory as a Method of Critical Thinking

by

Colleen Anderson

ED 399 548

Using stasis theory in the composition classroom is not new. The three main questions of stasis--the an sit, or conjectural issue, the quid sit, or issue of definition, and the quale sit, or issue of quality--roughly approximate different kinds of writing.[1] For example, a student writing a paper exploring the Bermuda Triangle is considering the issue of fact or an sit question since the existence of unexplained phenomena in the Triangle is the debatable issue. Specifically, the student is asking, "Does the Bermuda Triangle exist, or are the variety of phenomena reported simply the result of overworked imaginations and/or natural occurrences?" However, a paper written about the morality of euthanasia hinges upon the quid sit or issue of definition since arguments concerning euthanasia rely upon the definitions of life and death. Here the student must address questions which concern not only the quality of life, but also medical definitions of death. Finally, an argument focusing upon the quale sit or issue of quality most often zeroes in on the

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[1]The **translativa**, or issue of transfer, concerns whether a legal case is being tried in the correct court or needs to be transferred to a different venue. Thus far I have not encountered such a case to discuss, though it has been a concern in some cases due to the defense's concern about finding an unbiased jury, particularly in a crime where race is perceived as an issue.

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advantages or disadvantages of a particular course of action. For example, the student might ask whether the apparent proliferation of nuclear arms, often referred to as "stockpiling" by those opposed to such military build-up, actually is helping or threatening our status as a world power.

Though such use of stasis theory can be quite helpful as a means of demonstrating to students a way of focussing and reasoning about their topic, it originated with Hermagoras and was developed by Cicero as a method of inquiry for use in the courtroom. Thus a case regarding the an sit or conjectural issue might concern whether one individual killed another, whereas the issue of definition would address the name and type of a particular action, manslaughter versus premeditated murder, for instance. In cases where agreement has been reached regarding both the committal and the type of act, the question which remains is the quality of the act. This might include, for example, to what degree intent was present in the act.

In this paper I am suggesting that stasis theory as it was originally conceived--a means of establishing the question at hand in the courtroom--can be used anew in composition courses as a method of critical thinking. These same questions can be brought to bear upon current courtroom trials. Doing so can assist in the prediction of trial maneuvers and outcomes. Stasis can also be used as a tool of invention, comparison, and ulti-

mately analysis when applied in conjunction with Ciceronian judicial rhetoric.

Stasis as a means of prediction

Stasis theory can be used as a means of predicting the course of a legal case. For example, when former Mayor Marion Barry of Washington, DC was indicted for cocaine use, the questions of stasis pointed toward the development of his defense. Together with my argumentative writing class, I approached his case with each successive question of stasis. The first question, the an sit or issue of fact was, did Mayor Barry use cocaine? The answer to this question was given in the police videotape which showed him smoking the crack cocaine. Thus his defense could not arise from the issue of fact, specifically, a plea of innocence.

Turning to the issue of definition, however, did provide clues to his defense. The state termed his offense a misdemeanor, but Barry's lawyer initially argued that the police's handling of the case constituted entrapment. Further study, however, resulted in throwing out this defense since the sting operation used did not meet the legal definition of entrapment. Ultimately, Barry's defense came to rest upon the quale sit, or issue of quality, since his lawyer admitted Barry's alcoholism, arguing that because of this disease, Barry's judgement was impaired; thus, his intent and judgement were clouded.

Cicero explains that when the defendant enters a concessio

plea, which is a division of the quale sit, he confesses to the crime while hoping to avoid the punishment. This kind of plea may take one of three forms: ignorance, accident, or necessity. Though Barry could not plead ignorance of the law any more than he could argue that his "intention was thwarted by some act of fortune" (Cicero II. xxxi. 96), he could and did argue from necessity. A plea of necessity, according to Cicero, "is brought in when the accused is defended as having done what he did because of some force beyond his control" (II. xxxii. 98). Thus in Barry's case, his lawyer argued that his alcoholism was a disease "beyond his control."

Invention, comparison, and analysis

Cicero argues that all material for either the prosecution or the defense is drawn from the attributes of persons and actions, which Cicero breaks into eight categories. First, a person's "nature" includes sex, race, place of birth, family, age, and advantages and disadvantages of mind and body. "Manner of life" refers to a person's occupation, rearing, teachers, friends, and character of home life. "Fortune" includes one's wealth and status, whereas "habit" refers to a particular acquired ability of mind or body. "Feeling" can be described as one's emotional or mental state. "Purpose" means a person's plan to do or not to do the act in question. Finally, "achievements, accidents, and speech" span the past, present, and future.

These attributes may be used as a method of invention by

considering a given defendant in terms of each characteristic. In the cases of Mike Tyson and William Kennedy Smith, these attributes act as categories in common between the two. In both cases, the men were tried on charges of rape, and each argued that though they had sexual intercourse with the woman bringing the charge, each also argued that the act was consented upon; thus the focus of these cases is the quid sit. The listing that follows illustrates the kind of information that Cicero's technique yields:

Name	Mike Tyson	William Kennedy Smith
Nature	African-American 25 year old male	Caucasian 25 year old male
Manner of Life	poor, foster home juvenile delinquent	rich, pampered medical student
Fortune	famous boxer, rich	famous name, rich
Habit	boxing	educated and cultured
Feeling	confident, frank "I can do no wrong" of attitude	confident, cultured could get out of trouble b'se of family

Purpose	to have sexual intercourse	to have sexual intercourse
Achievements	known history of sexual harassment and physical abuse of women	allegedly attacked women sexually in the past

Such comparison leads to further analysis given the different outcomes in the two trials. For example, Smith's history of sexual abuse was deemed inadmissible in court, whereas Tyson's sexual harassment and physical abuse of women, though also deemed inadmissible, had already become a matter of public knowledge and therefore may well have influenced the jury. Moreover, such a list helps students to focus on the rather elusive obvious, such as differences in race and background.

The victim in each case might also be compared. Doing so highlights the youth and naive innocence of the victim in the Tyson case, whereas the woman in the Kennedy Smith case met Smith in a bar and had a history of three abortions. This kind of comparative analysis forces the student to come to terms with inconsistencies and apparent injustices in the judicial system. The victim in the Tyson case testified that Tyson met her and asked, "'You're a nice, Christian girl, aren't you?' She replied, 'Yeah'" (Barrett 31). When he called her at 1:36 in the morning, she initially refused and then asked her roommate to come along. Finally, she went alone, camera in hand, to what she thought would be a celebrity filled party:

> Unlike Patricia Bowman, who lost her date-rape case against William Kennedy Smith, Tyson's accuser came across on the stand as the perfect victim. Now a scholarship student at a Roman Catholic college, she was barely 18 when she arrived at the beauty pageant. Growing up in Rhode Island, she apparently was the all-American girl; she played softball, ushered at her church and volunteered as a Big Sister. The court heard about her high-school days as a varsity cheerleader, class president and most outstanding sophomore. (Barrett 31)

Clearly this comparison invites further student discussion, discussion made richer and facilitated by actively putting to test Cicero's attributes of persons.

Jeffrey Dahmer's defense rested upon the quale sit or quality of the act. By arguing that Dahmer was insane, the defense was offering a plea of concessio or confession and avoidance. As in the case of Mayor Barry, the defense pleaded innocent by reason of necessity; that is, Dahmer's lawyer argued that the defendant committed his crimes but that he did so "because of some force beyond his control"--in Dahmer's case, insanity.

Cicero's attributes of actions help to summarize Dahmer's crimes and provide reasons for the trial's outcome. Cicero offers four divisions of the attributes of action. The performance of the act includes the place, time, occasion, manner, and facilities surrounding the crime. In Dahmer's trial, the horror

of his acts was discussed in these terms. In fact, the defense presented an even grislier version of his crimes than did the police in the hopes that doing so would help prove Dahmer insane. Cicero explains that the consequence of the act includes its name and frequency of occurrence. Again, the rarity of Dahmer's crimes intensified the horror surrounding them. The adjunct of an action is comprised of viewing the crime in relation to similar, contrary, or negative actions, and in terms of genus and species. His crimes were most like those of Ted Bundy, who was a serial killer who practiced necrophilia.

Finally, coherent with the action are the reason for it and what occurs before, during and after the crime. This attribute of actions proved to be the downfall of Dahmer's insanity plea. Before his crimes, Dahmer chose victims who didn't own automobiles because he knew the victims could be traced through them. He also killed his victims on weekends so he wouldn't miss work. Finally, he dismembered the bodies of victims after he killed them to get rid of the evidence, according to the prosecution--not because of an insane, uncontrollable impulse. Thus Dahmer's plea of insanity was rejected.

Conclusion

Stasis theory assists students in their critical thinking since it requires them to zero in on the point in question. By applying the three questions of stasis discussed, the student can often anticipate lines of defense in a trial. The Ciceronian attributes of persons and actions can act as a thorough means of

invention which yields information for comparison or analysis before, during, or after a trial.

Applying these methods to current trials, especially given the advent of televised courtroom drama, makes good sense. Students are usually familiar with such trials, and information regarding them can be obtained easily from current papers and magazines. Moreover, students generally express a high level of interest in courtroom trials and are eager to analyze and discuss them. Doing so sharpens their ability to think critically not only about the trials under discussion, but also about their world.

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